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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/810,233

03/27/2004

William Paul Carroll

9458

7590

08/22/2005

William P. Carroll

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#248

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EXAMINER

GUADALUPE, YARITZA

ART UNIT

PAPER NUMBER

2859

DATE MAILED: 08/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/810,233

Applicant(s)

CARROLL, WILLIAM PAUL

Examiner

Yaritza Guadalupe McCall

Art Unit

2859

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 4 and 5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 4 and 5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

In response to Amendment filed June 28, 2005

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 4 - 5 are rejected under 35 U.S.C. 103 ( a ) as being unpatentable over Channell (US 4,910,876 ) in view of Smothers ( US 6,640,455 ).

With respect to claim 4, Channell discloses a level device to be used when installing door jambs ( See Column 3, lines 21 – 23 ) comprising a one piece 90 degree right angle Square ( 10, 26 ) having a tube portion ( 24 ), and an I –beam level jamb ( 12 ).

Channell does not disclose the hollow sleeve box beam extension tube receiving the I-beam cross section right angle square as stated in claim 4.

Regarding to the box beam tube as stated in claim 4 : Channell discloses a one piece 90 degree right angle Square ( 10, 26 ) and a conventional carpenter's level ( 12 ) having an I-beam configuration, said right angle square having a tube portion ( 24 ) having an opening to establish a connection that receives the center portion ( 16 ) of the I – beam in order to form the 90 degree tool. Smothers discloses an adjustable carpenter's level having an I – beam cross section portion (1) connected to a hollow sleeve box beam tube portion ( 5, 6, 7, 8 ) with face and edges that are rectangular to each other and slightly larger to the I-beam cross section portion thus allowing either end of said I – beam square portion to be inserted through said box beam extension tube ( See Figure 1 ) and secured by means of friction and pressure forcing the inserted I-beam in parallel relation to the sleeve box beam extension tube in order to provide a structural connection that adapts said level to fit in the box beam for storage. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to shift the position of the I – beam level and tube portion disclosed by Channell with a connection having a box beam jamb tube receiving an I – beam portion as taught by Smothers in order to provide a structural connection that adapts said level to fit in the box beam for storage and since shifting the location of the I – beam level and box beam tube from the location shown by Channell, absent any criticality, is only considered to be an obvious modification of Channell device that a person having ordinary skill in the art at the time the invention was made would be able to provide using routine experimentation since the courts have held that there is no invention in shifting the position if the operation of the device would not be thereby modified. *In re Japikse*, 86 USPQ 70 ( CCPA 1950 ).

With respect to the method as stated in claim 5, the method including the steps of inserting and securing a one piece 90 degree right angle I-Beam square into the top end of a rectangular sleeved shaped box beam extension tube ( See Figure 1 and dashed lines in Figure 2 ) in order to form an extended 90 degree right angle square that is reversible, adjustable in length and width by use of a various length 90 degree right angle square will be met during the regular operation of the level disclosed by the combination of Channell and Smothers.

### *Response to Arguments*

3. Applicant's arguments with respect to claims 1 - 3 have been considered but are moot in view of the new ground(s) of rejection.

Regarding the "one piece square" : Channell discloses the claimed invention as stated above including a 90 degree angle, but Applicant argues that this piece "is formed of four combined and distinct parts and a plurality of screws". This argument is not persuasive since the structure shown by Channell in Figure 2, clearly suggests that the square is a one piece structure. Furthermore, it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. Howard v. Detroit Stove Works, 150 U.S. 164 ( 1893 ).

With respect to the L-shaped attachment, applicant's arguments are not persuasive since it is clear from the structure disclosed by Channell that the 90 degree or right angle square is an L-shaped member, which fully meets the requirements of newly submitted claims 4 and 5.

*Conclusion*

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yaritza Guadalupe McCall whose telephone number is (571)272-2244. The examiner can normally be reached on 8:00 AM - 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F.F. Gutierrez can be reached on (571) 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Yaritza Guadalupe-McCall  
Patent Examiner  
Art Unit 2859  
August 17, 2005



CHRISTOPHER W. FULTON  
PRIMARY EXAMINER